SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY
11/07/2001

*** FILED ***
11/15/2001
CLERK OF THE COURT
FORM L000

HONORABLE MICHAEL D. JONES

P. M. Espinoza
Deputy

LC 2001-000245
Docket Code 512 Page 1
FILED: _____

STATE OF ARIZONA
v.
DAVID FREDRICK BUTLER

DIANA C HINZ

GENE R STRATFORD

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT
Cit. No. #5852878
Charge: 1. DUI OR APC
DOB: 02/27/50
DOC: 07/17/00

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement since the time of oral argument on November 5, 2001. This decision is made within 30 days as required by Rule 9.8, Maricopa County Superior Court Local Rules of Practice. This Court has reviewed and considered the record and transcript on the appeal from the Phoenix City Court, and the Memoranda and argument of counsel.

Appellant, David Fredrick Butler, was accused of committing on July 17, 2000 within the City of Phoenix the crimes of Driving While Under the Influence of Intoxicating Liquor, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(1); Driving With an Alcohol Content of .10 or Higher, a class 1 misdemeanor in violation of A.R.S. Section 28-1381(A)(2); and Extreme DUI, a class 1 misdemeanor in violation of A.R.S. Section 28-1382. Appellant filed a Motion to Suppress all evidence obtained as the result of his traffic stop based upon his position that the stop was made unlawfully. An evidentiary hearing was held on Appellant's Motion to Suppress on March 12, 2001. Phoenix Police Officer Michael Rush testified. At the conclusion of the evidentiary hearing, the trial

judge denied Appellant's Motion to Suppress.[1] After the trial judge's ruling on the Motion to Suppress, the parties waived their rights to a trial by jury and submitted the case to the court on the basis of stipulated police reports and facts. Appellant was found guilty of Driving While Under the Influence of Intoxicating Liquor in violation of A.R.S. Section 28-1381(A)(1) and Extreme DUI in violation of A.R.S. Section 28-1382. The charge of Driving with a Blood Alcohol Level Greater than .10 was dismissed without prejudice. Appellant was sentenced to serve 30 days in jail and 20 days were suspended pending successful completion by Appellant of an alcohol screening and counseling program. Appellant was ordered to pay a fine of $443.00, an $85.00 screening assessment fee, an Extreme DUI assessment of $250.00 and jail costs of $220.00. A timely Notice of Appeal was received April 19, 2001.

On appeal the Appellant raises the issue preserved within his Motion to Suppress: Whether the stop by the Phoenix Police officers of his vehicle was authorized by law. Appellee's position is that the stop was an appropriate "investigatory stop" of Appellant's vehicle. An investigative stop is lawful if a police officer is able to articulate specific facts which, when considered with rational inferences from those facts, reasonably warrant the police officer's suspicion that the accused had committed, or was about to commit, a crime.[2] These facts and inferences when considered as a whole ("the totality of the circumstances") must provide "a particularized and objective basis for suspecting the particular person stopped of criminal activity."[3]

A temporary detention of an accused during the stop of an automobile by the police constitutes a "seizure" of "persons" within the meaning of the fourth amendment to the United States Constitution, even if the detention is only for a brief period of time.[4] When information is received by law enforcement officers from a citizen who voluntarily comes forward to aid law enforcement, this information is presumed to be reliable.[5] Arizona cases have differentiated between "citizen complaints" and "anonymous tips."[6] An anonymous tip is untraceable information by an unknown caller which may, if sufficiently detailed to indicate that the informant came by the information in a reliable manner, be sufficient to justify a reasonable suspicion to make a stop.[7] Generally, Arizona cases have supported the proposition that reliability is greater from a "citizen

---

[1] R.T. of March 12, 2001, at page 41.

[2] *Terry v. Ohio*, 392 U.S.1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Magner*, 191 Ariz. 392, 956 P.2d 519 (App. 1998); *Pharo v. Tucson City Court*, 167 Ariz. 571, 810 P.2d 569 (App. 1990).

[3] *United States v. Cortez*, 449 U.S. 411, 417-18, 101 S.Ct. 690, 695, 66 L.Ed.2d 621 (1981).

[4] *Wren v. United States*, 517 U.S. 806, 809-810, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

[5] *State v. Diffenderfer*, 120 Ariz. 404, 406, 586 P.2d 653, 655 (App. 1978).

[6] *State v. Gomez*, 198 Ariz. 61, 63, 6 P.3d 765, 67 (App. 2000).

[7] *State v. Altieri*, 191 Ariz. 1, 951 P.2d 866 (1997).

complaint" where "an ordinary citizen volunteers information which he has come upon in the ordinary course of his affairs, completely free of any possible ordinary gain."[8]

Whether the police in a particular case have a reasonable suspicion to make an investigative stop is a mixed question of law and fact that an appellate court must review *de novo*.[9]

In this case the trial judge entered a detailed order before denying Appellant's Motion to Suppress. The trial judge stated:

This is in the case of David Frederick Butler, the matter having been under advisement as to Defendant's Motion to Suppress. Court has had the opportunity to review the *Gomez* and *Altieri* cases that have been provided to it. Much of the pertinent part of the *Gomez* case addresses the reliability of the anonymous caller in that case and equating or using that -- holding as it relates to the facts in this case. To call the 911 call in this case, to call this anonymous call untraceable because there was the call in the *Gomez* case was also an anonymous call, but to call -- to designate the phone call in Mr. Butler's case untraceable I think is inconsistent with the evidence that's been presented here.

Defendant's exhibit #1 has the cell phone number of the caller. It does not indicate an address but it has the cell phone number of the caller and I find the fact that no address to not be of much consequence. The cell phone number itself is known and is therefore traceable, much like the truck driver and the *Lawson* case that was cited in *Gomez* case would be traceable. Also, the caller in Mr. Butler's case was recorded, and it would be traceable.

I see no meaningful distinction between calling from one's home and calling from one's cell phone when the cell phone number is known to the police and the owner of that number could be identified, the call could be traced just as the owner of the fixed phone number from the house could be found.

So, in terms of the issue of reliability that's raised, I think the evidence in this case is consistent with the holding in *Gomez* and that the -- that this is traceable and recorded and, therefore, not inappropriate.

With respect to the specificity of the alleged criminal conduct, you have a man and woman engaged in a physical fight (this) describes the criminal conduct of assault.

With respect to the specificity of the description, you have the vehicle and the person (the police) stopped. You have a male exiting the location of 28th Street and Indian School. The call comes in at 8:28 p.m. and the male exits in a small gray Nissan pickup truck and is southbound on 28th Street. This officer stops the Defendant who is southbound on 28th

---

[8] *State v. Gomez,* 198 Ariz. at 63, 6 P.3d at 767, citing *State ex.rel Flournoy v. Wren,* 108 Ariz. 356, 364, 498 P.2d 444, 452 (1972); See also, *State v. Lawson,* 144 Ariz. 547, 552, 698 P.2d 1266, 1271 (1985); *State v. Diffenderfer,* Supra.

[9] *State v. Rogers,* 186 Ariz. 508, 924 P.2d 1027 (1996); *State v. Gomez,* Supra.

Street within four minutes of the phone call, at Osborn and 28th Street. This would seem to be sufficient under the law.

I do not find that this stop was unlawful. Motion to Suppress, therefore, is denied.[10]

The trial judge's findings are supported by the record that the Phoenix police officers received a "citizen complaint" on the 911 dispatch line at 8:28 p.m. regarding a physical fight between a male and a female, that the police characterized as a domestic violence incident.[11] The caller indicated that a female left the scene of the assault in a small white car and the male left in a small gray Nissan pickup truck matching the description of the vehicle Appellant was driving.[12] Given these descriptions, the location of the events where the alleged assault took place and the location of Appellant's vehicle when it was first observed and then stopped, the trial judge's ruling was clearly supported by the record. This Court determines *de novo* that said facts do establish a reasonable basis for the Phoenix police officer to have stopped the automobile driven by the Appellant.

IT IS THEREFORE ORDERED sustaining the judgments of guilt and sentences imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all future proceedings.

---

[10] R.T. of March 12, 2001, at pages 39-41.

[11] Id. at pages 3-4.

[12] Id. at page 6, 9-10.